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Wetumpka, AL 36092

COPY MAILED

JUN 07 2006

OFFICE OF PETITIONS

In re Application of Linsley	:	
Application No. 10/673,866	:	Decisions on Petition
Filing Date: November 22, 2005	:	
For: Twister Wings Sailboat	:	

This decision is in response to the papers filed on April 7, 2006, which are being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment, a petition under 37 CFR 1.181 to withdraw the Notice to File Missing Parts mailed December 20, 2005,¹ and a petition under 37 CFR 1.53 for a filing date of September 29, 2003.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **granted**.

The petition under 37 CFR 1.181 to withdraw the Notice to File Missing Parts mailed on December 20, 2005, is **dismissed as moot**.

The petition under 37 CFR 1.53 is **dismissed**.

Facts:

The application was filed on September 29, 2003.

Applicant received a phone call on October 6, 2003, from Ms. Streater at the USPTO. Ms. Streater informed applicant that his credit card had been charged the application filing fee and a fee for four independent claims. Ms. Streater also informed applicant of his application number.

On October 30, 2003, petitioner filed a "Request for Certificate of Correction."² Petitioner sought to correct errors in the specification and abstract. Specifically, petitioner sought to delete a reference to Figure 9 in paragraph 68 of the specification and to delete a reference to Figures 1 and 5 in the first sentence of the abstract. On the same date, petitioner also filed a paper entitled "Submission of Corrected Drawings." Petitioner stated he was unsure if sheet 5 of the drawings filed as part of the original application papers had included reference numbers 24 and 34 for Figure 7. Petitioner submitted a new, corrected version of sheet 5 of the drawings.

¹ The Office notes a duplicate Notice to File Missing Parts was also mailed on December 21, 2006. Any future reference to the December 20, 2006 Notice should be interpreted to also refer to the December 21, 2006 Notice.

² The Office notes that Certificates of Correction are only applicable to patents, not to patent applications.

The original application papers were "scanned" into an electronic file wrapper. The "Table of Contents" in the image file wrapper *appears* to indicate the original application included:

- 31 pages of specification, not including claims or abstract
- 1 page of claims
- 1 page of abstract
- 6 sheets of drawings
- 2 pages of oath or declaration
- 1 page of IDS
- 18 pages of non-patent literature related to IDS
- 1 page of petition
- 5 additional pages the exact nature of which is unclear

Prior to August 10, 2005, the USPTO discovered the original application papers were inaccessible because they had been incorrectly scanned and indexed. The USPTO was unable to locate the original physical application papers. The Office notes the papers mailed October 30, 2003, were properly scanned and indexed into the Image File Wrapper.

A "Notice Under 37 CFR 1.251 - Pending Application," was mailed to petitioner on August 10, 2005. The Notice stated,

The file on the cover sheet cannot be located after a reasonable search. Therefore, the Office is initiating the reconstruction of the file of the above-identified application.... Applicant is hereby requested to provide a copy of applicant's record (if any) of all the correspondence between the Office and applicant for the above-identified application [and] a list of such correspondence, and a statement the copy is a complete and accurate copy of applicant's record of all of the correspondence between the Office and the applicant.

Petitioner filed a reply on August 22, 2005. Petitioner stated the copy of the papers being submitted were a copy of all correspondence between the Office and applicant. However, petitioner's reply did not include a copy of *all* correspondence between the Office and applicant. Specifically, the reply did not include a copy of the original application papers filed on September 29, 2003. The specification, claims, abstract and drawing pages filed on August 22, 2005, consisted only of copies of papers filed on October 30, 2003.

Since petitioner's reply stated it included a copy of all the papers filed by petitioner or received by petitioner, the Office treated the papers filed on August 22, 2005, as if the papers were the only papers ever filed for the application. In other words, the "application" included:

- 2 pages of specification,
- 1 page of abstract, and
- 1 sheet of drawings.

A "Notice of Incomplete Nonprovisional Application" was mailed on October 28, 2005. The Notice stated a filing date had not been accorded to the application because the specification

failed to include at least one claim. The Notice stated the filing date for the application would be the date the Office received one or more claims. The Notice stated the oath/declaration was missing as well as Figures 6, 9, and 10, referenced in the specification. The Notice stated petitioner owed negative \$168 (the sum which had been charged previously for the four excess independent claims).

On November 22, 2005, petitioner filed a "Response to Notice of Nonprovisional Application, Dated 10/28/05." Petitioner also submitted \$400.

Petitioner's response stated the specification had included at least one claim. Specifically, petitioner stated 7 claims had been included on page 31 of the specification. Petitioner submitted a copy of page 31 of the specification.

Petitioner's response stated that a declaration had been included with the original papers. Petitioner submitted a new declaration.

Petitioner's response stated that Figures 6, 9, and 10 had been filed with the application. Petitioner stated the drawings had included 13 figures on 6 pages. Petitioner submitted a new copy of the drawings. The Office notes the new set of drawings included 7 sheets. A copy of the seventh sheet is attached to this decision.

Petitioner has stated the Office never returned the postcard receipt submitted with the application. However, the papers filed on November 22, 2005, did include a copy of the postcard filed with the Office. The postcard stated the following items had been filed as part of the application:

32 pages of specification including claims, Abstract, Index and Writing Format
6 sheets of drawings including 13 Figures

The postcard also stated the following papers had been filed with the original application:

Prior Art Patent Search
Prior Manufactured Art
Prototype Development
Transmittal Sheet
2 copies of 2 pages of Fee Transmittal
2 pages of signed declaration
Information Disclosure Statement
Petition to Make Special
Disclosure Document Reference Letter

Although petitioner's response contended the specification had included 31 pages, petitioner only supplied a copy of page 31. As a result, the Office had received the following papers *after* it mailed the Notice under 37 CFR 1.251 on August 10, 2005:

3 pages of specification including 1 page of claim,

1 page of abstract, and
7 sheets of drawings.

The Office of Initial Patent Examination did not forward petitioner's November 22, 2005 response to the Office of Petitions. Instead, the Office of Initial Patent Examination simply accorded the application a filing date of November 22, 2005.

The Office mailed a Notice to File Missing Parts on December 20, 2005. The Notice stated additional fees in the amount of \$422 were required for the application. The new fee amounts were based on the fact the application had been accorded a filing date of November 22, 2005, rather than September 29, 2003. The Notice set an extendable two month time period for reply.

Petitioner filed the instant petition on April 7, 2006.

On April 28, 2006, the Office of Initial Examination withdrew the December 20, 2005 Notice. The record indicates the withdrawal may have been based on a belief the Notice had been sent to an incorrect address based on a request to change the address filed January 17, 2006. However, the Notice was mailed to the correct address of record on December 20, 2005. The Office mailed a new Notice to File Missing Parts to the new address on April 28, 2006.

Discussion:

After the loss of the application papers, the Office requested a copy of all the papers filed by applicant. Applicant did not supply a copy of all the papers. Instead, the papers filed by applicant on August 22, 2005, were incomplete. Therefore, the Office was correct in mailing a Notice informing applicant the papers were incomplete and that a filing date could not be accorded based only upon the papers filed August 22, 2005.

Unfortunately, the Notice of Incomplete Application failed to effectively communicate the nature of the problem. If the Notice had conveyed the exact nature of the problem to petitioner, petitioner could have filed a petition and a petition fee of \$400 to correct the problem. The Office notes the \$400 petition fee would not have been refundable.

A request for reconsideration should be filed in order to obtain a filing date of September 29, 2003.

The Office cannot process the application without ALL of the application papers. The fact the Office was responsible for losing the original papers does not alter the fact a copy of the papers is necessary for the examiner to consider the application.

Petitioner should submit a copy of ALL papers filed on September 29, 2003. The original application papers will consist of these papers and the application will be accorded a filing date of September 29, 2003. The request for reconsideration should include language identical to the language on the Notice Under 37 CFR 1.251 submitted by petitioner on August 22, 2005. A copy of the August 22, 2005 Notice is attached.

The papers filed on October 30, 2003, indicate petitioner wishes to amend the application. If petitioner continues to wish to amend the original papers, a *formal amendment* should be filed in compliance with 37 CFR 1.121.

The application is not abandoned.

37 CFR 1.251(b) states, "With regard to a pending application, failure to comply with [the Notice] within the time period set in the notice will result in abandonment of the application." However, the Notice mailed August 10, 2005, did not set forth a time period for reply. Therefore, the application is not abandoned as a result of a failure to file a "proper" reply to the Notice Under 37 CFR 1.251(b).

The Office mailed a Notice to File Missing Parts on December 20, 2005. The Notice set an extendable two month time period for reply. A reply could have been timely filed as late as July 20, 2006, with payment for a five month extension of time. On April 28, 2006, the Office of Initial Examination withdrew the December 20, 2005 Notice. Therefore, the application is not abandoned as a result of a failure to timely reply to the Notice to File Missing Parts mailed December 20, 2005.

The Office mailed a new Notice to File Missing Parts on April 28, 2006. Since the period for reply to the new Notice has not expired, the application is not abandoned as a result of a failure to reply to the new Notice to File Missing Parts.

The Notice to File Missing Parts mailed on December 20, 2005 has been withdrawn.

The petition under 37 CFR 1.181 to withdraw the Notice to File Missing Parts mailed on December 20, 2005, is dismissed as moot since the Office of Initial Examination withdrew the December 20, 2005 Notice on April 28, 2006.

The Notice to File Missing Parts mailed on April 28, 2006, is hereby withdrawn.

The Notice to File Missing Parts mailed on April 28, 2006, is based on a conclusion the application is not entitled to a filing date of September 29, 2003. The Office expects the application to be eventually accorded a filing date of September 29, 2003. Therefore, the Notice will be withdrawn at this time.

Petitioner may wish to submit a paper version of the information on the CD/DVD submitted on April 7, 2006.

If petitioner wishes for the information included on the CD/DVD to be considered, a paper copy of the information should be filed. As stated in the attached review of the CD/DVD, the subject matter on the CD/DVD is not matter one may submit by CD/DVD.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time

under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.53."

Further correspondence with respect to this matter should be addressed as follows:

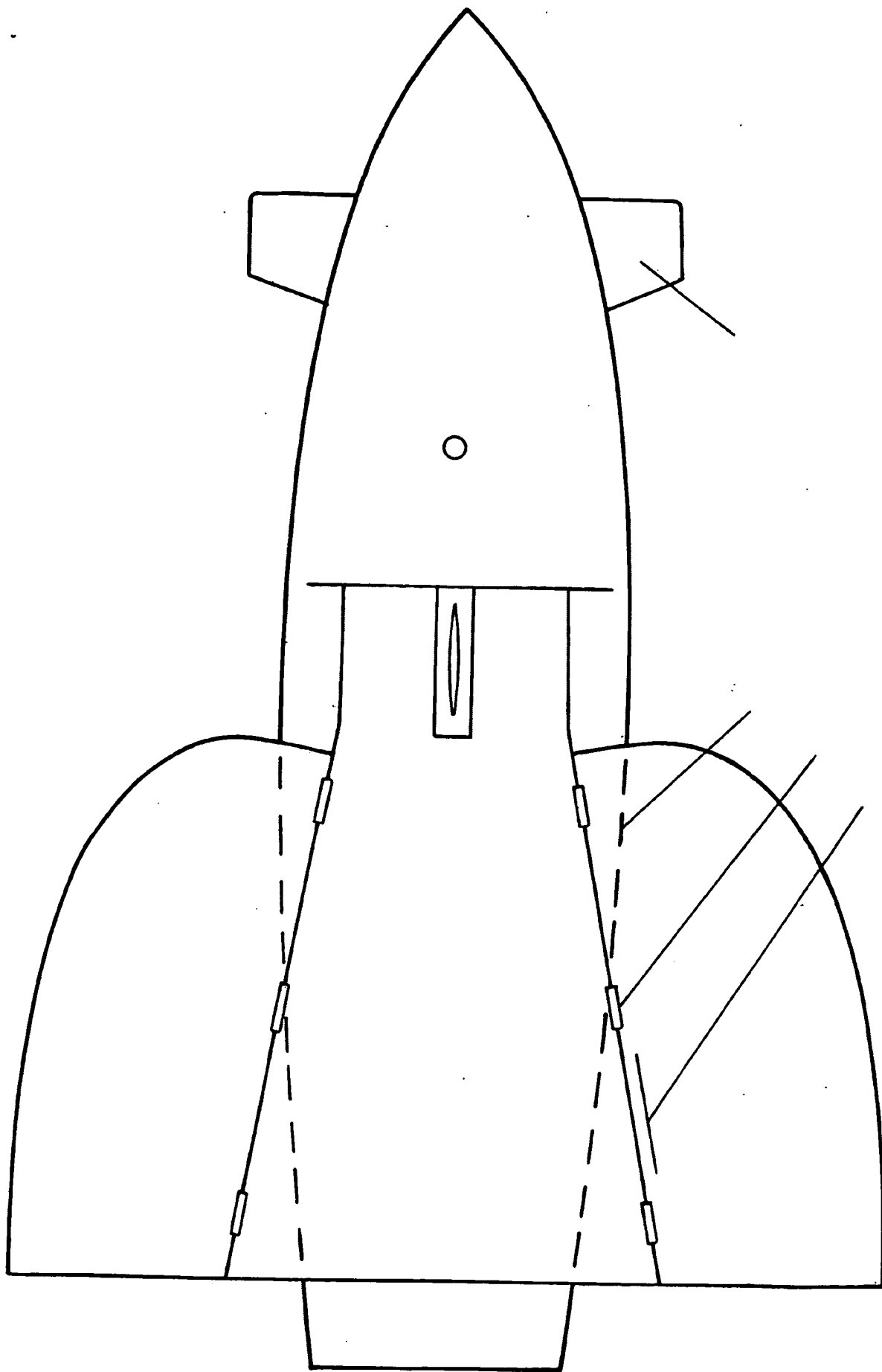
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachment: Copy of last sheet of drawings filed on November 22, 2005
Copy of Notice Under 37 CFR 1.251 filed August 22, 2005
Copy of "CD Submission Review Results"



COMMISSIONER FOR PATENTS

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

In re Application of: N/A
Application No.: 10/673866
Effective Date: 09/29/2003
Title: N/A
Direct to: U. S. Patent and Trademark Office
Mail Stop: Duplicates
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

NOTICE UNDER 37 CFR 1.251 - Pending Application

Statement (check the appropriate box):

☒ The copy submitted with this reply is a complete and accurate copy of applicant's record of all of the correspondence between the Office and the applicant for the above-identified application (except for U.S. patent documents), and applicant is not aware of any correspondence between the Office and applicant for the above-identified application that is not among applicant's records.

☐ The copy of the paper(s) listed in the notice under 37 CFR 1.251 is/are a complete and accurate copy of applicant's record of such paper(s).

☐ The papers produced by applicant are applicant's complete record of all of the correspondence between the Office and the applicant for the above-identified application (except for U.S. patent documents), and applicant is not aware of any correspondence between the Office and the applicant for the above-identified application that is not among applicant's records.

☐ Applicant does not possess any record of the correspondence between the Office and the applicant for the above identified application.

Aug. 17, 2005
Date

Edward Linsley
Signature
Edward Linsley
Typed or printed name

A Copy of this notice should be returned with the reply.

Burden Hour Statement: This collection of information is required by 37 CFR 1.251. The information is used by the public to reply to a request for copies of correspondence between the applicant and the USPTO in order to reconstruct an application file. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 60 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

CD Submission Review Results

Application Number	10/673866	Receipt Date	
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<input type="checkbox"/> New Application	<input type="checkbox"/> Response to Notice	Date of Response	04/07/06
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☐ Jumbo – Large tables are included on the CD Page Count _____

☐ There are no problems with the CDs in the submission.

Items checked below are to be selected in the PALM Pre-Exam CD problem list.

Omitted Items

- ☐ Files on compact disc are unreadable:
- ☐ Disc(s) of either set not readable:
- ☐ Disc(s) do not contain file names listed:
- ☐ Amended CD missing unamended files:
- ☐ Missing compact discs:

Missing Parts

- ☐ Disc(s) do not contain file names listed:
- ☐ Discs contains files that are non-ASCII files:
- ☒ Only one copy of the CD, no duplicate:
- ☐ Wrong media type, e.g., CD-RW:
- ☒ The transmittal letter and specification do not list information:
- ☐ Both disc(s) contain unreadable files:
- ☐ One disc(s) contain unreadable files:
- ☐ Compact disc(s) contain viruses, but are still readable:
- ☐ EFS/Paper Submission:
- ☐ Table does not maintain data in proper alignment:
- ☒ Not proper subject matter for CD's:

Informality – If no problem, do not send notice, leave letter for Examiner

- ☐ No statement in transmittal letter that CD's are the same:
- ☐ No incorporation by reference statement for the CD's:
- ☐ CD's not labeled "Copy 1" and "Copy 2":
- ☐ Deficient CD packaging:
- ☒ Deficient Labeling on CD's:
- ☐ The transmittal letter does not list information:
- ☐ The specification does not list information:
- ☐ Table less than 51 pages submitted on CD:

File Directory Attachment

- ☐ Copy of file directory listing is attached and should be mailed to applicant
- ☐ Copy of file directory listing is not attached
- ☐ Copy of file directory listing is not attached because it is over one page long